

139 FERC ¶ 61,173
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Entergy Services, Inc.

Docket No. ER12-1428-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued June 1, 2012)

1. On April 2, 2012, Entergy Services, Inc., on behalf of the Entergy Operating Companies,¹ submitted revisions to its Open Access Transmission Tariff (OATT) to include certain regional transmission and market operations costs associated with the development and implementation of the Weekly Procurement Process (WPP). As discussed below, the Commission accepts and nominally suspends the filing, to become effective June 1, 2012, as requested, subject to refund, and establishes hearing and settlement judge procedures.

I. Background

2. In a partial settlement approved by the Commission in Docket No. ER95-112-000, ER95-112-002 and ER95-112-007, Entergy established a formula rate to derive charges for service on its bulk transmission facilities.² Appendix 1 to Attachment H and Appendix A to Schedule 7 of Entergy's OATT (collectively, the OATT Formula Rate) provide for an annual redetermination of rates for long-term and short-term firm point-to-point transmission service, non-firm point-to-point transmission service, and network integration transmission service, according to a formula in Entergy's OATT and based on actual data for the immediately preceding calendar year.

¹ The Entergy Operating Companies are Entergy Arkansas, Inc.; Entergy Gulf States Louisiana, LLC; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; and Entergy Texas, Inc.

² *Entergy Services, Inc.*, Opinion No. 430, 85 FERC ¶ 61,163 (1998), *order on reh'g*, 91 FERC ¶ 61,153 (2000).

3. On December 16, 2005, in Order No. 668,³ the Commission adopted certain modifications to the Uniform System of Accounts applicable to public utilities and licensees, including independent system operators and regional transmission organizations (RTO). Among other things, the Commission revised several existing account designations and added new accounts to the Uniform System of Accounts relating to regional transmission and market operations.

4. The WPP is a process developed by Entergy to “optimize the designation of network resources under the OATT and thereby facilitate an improved procurement of power purchases from competing sources.”⁴ The WPP became operational in March 2009 and is operated by Entergy and overseen by Southwest Power Pool (SPP) in its role as Entergy’s Independent Coordinator of Transmission.

II. Entergy’s Filing

5. Entergy proposes amendments to the OATT Formula Rate that would provide recovery of regional transmission and market operations costs. Entergy states that these amendments to the OATT would permit recovery, from all customers under the OATT, of costs booked to new accounts pursuant to Order No. 668 related to the development and implementation of the WPP. Specifically, Entergy proposes to revise: (1) the definitions of transmission plant to include not only investment recorded in FERC transmission plant Accounts 350 through 359, but also investment recorded in FERC regional transmission and market operation plant Accounts 380 through 387; and (2) the definitions of transmission operation and maintenance expense to include not only costs recorded in FERC transmission and operation expense Accounts 560 through 573, but also costs recorded in FERC regional market expense Accounts 575 through 577.⁵ Entergy also proposes other conforming revisions to the OATT Formula Rate.

6. Entergy states that all capital costs closed at the time that the WPP became operational in March 2009. Accordingly, Entergy argues, these costs properly are included in transmission rates in subsequent test-years. Entergy argues that WPP costs are properly treated as transmission costs, as the Commission has specifically identified

³ *Accounting and Financial Reporting for Public Utilities Including RTOs*, Order No. 668, FERC Stats. & Regs. ¶ 31,199 (2005), *reh’g denied*, Order No. 668-A, FERC Stats. & Regs. ¶ 31,215, *reh’g denied*, 117 FERC ¶ 61,066 (2006).

⁴ Entergy Filing at 2.

⁵ We note that there is no FERC Account No. 577 in the Uniform System of Accounts.

the necessary transmission accounts for recording organized market investments in computer hardware, software, and communication equipment.⁶

III. Notice of Filing and Responsive Pleadings

7. Notice of Entergy's Filing was published in the Federal Register, 77 Fed. Reg. 21,553 (2012), with interventions and protests due on or before April 23, 2012. Motions to intervene were filed by the Louisiana Energy and Power Authority, the Lafayette Utilities System, and the Municipal Energy Agency of Mississippi; the Arkansas Electric Cooperative Corporation (AECC); Mississippi Delta Energy Agency (MDEA), Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi (Clarksdale), and the Public Service Commission of Yazoo City of the City of Yazoo City, Mississippi (Yazoo); and South Mississippi Electric Power Association (SMEPA). A joint protest was filed by MDEA, Clarksdale, Yazoo, SMEPA, AECC, Louisiana Energy and Power Authority, Lafayette Utilities System, and Municipal Energy Agency of Mississippi (together, Joint Customers). Entergy filed an answer to Joint Customers' protest, and Joint Customers filed an answer to Entergy's answer.

8. Joint Customers argue that Entergy has not demonstrated that regional transmission and market operations costs should be recovered from wholesale transmission customers. Joint Customers contend that, because the costs booked to the regional transmission and market operations accounts are related to Entergy's WPP, and because the WPP program serves a production function unrelated to the provision of transmission service, regional transmission and market operations costs are not properly recoverable under the OATT rates.⁷

9. Joint Customers assert that the RTO-related accounts that were developed in Order No. 668 were designed to encompass RTO costs related to both transmission and non-transmission activities, including activities related to optimizing the dispatch of production resources. Joint Customers argue that non-transmission-related costs should not be borne by transmission customers.⁸

10. Specifically, Joint Customers argue that benefits from the WPP accrue to Entergy's retail customers and their wholesale suppliers, not Entergy's wholesale transmission customers. Joint Customers maintain that SPP's analysis of WPP benefits consistently refers to production cost savings to Entergy, and that Joint Customers have

⁶ *Id.* at 3 (citing Order No. 668, FERC Stats. & Regs. ¶ 31,199 at P 9).

⁷ Joint Customers Protest at 3.

⁸ *Id.* at 4.

not identified any reference to WPP-related savings going to any other entity. Further, Joint Customers state that there is no indication in any of the quarterly reports that there were any WPP participants other than Entergy.⁹

11. Joint Customers also argue that even if providing transmission for resources selected in the WPP is characterized as a transmission activity, that would not justify recovery of the costs from Entergy's OATT customers. Joint Customers argue that the designation of Account Nos. 380-387 as regional transmission and market operation plant adds no support to Entergy's case absent evidence that the WPP provides transmission service to Entergy's OATT customers. Joint Customers add that the Commission has made clear that "accounting practices used by utilities can neither dictate Commission action with respect to establishing just and reasonable rates, nor create a company's right to recover revenues from its customers."¹⁰

12. Further, Joint Customers assert that the principle of cost causation requires that the costs of the WPP be borne by its beneficiaries. According to Joint Customers, if Entergy can demonstrate that specific OATT customers participate in the WPP, then it would be appropriate for those specific OATT customers to share the costs of the WPP program.¹¹

13. Entergy argues that Joint Customers created a false description of the WPP. Entergy maintains that, contrary to Joint Customers' description, the WPP is not a process that is used only to make purchases on behalf of Entergy customers, but a process to facilitate the granting of additional transmission service.¹²

14. Entergy also states that it established a new entity within the Entergy transmission function – Weekly Operations – that would grant transmission service by optimizing the offers and cost data submitted by the Energy Management Organization (EMO), any offers and cost data submitted by participating network integration transmission service customers, and requests for redispatch for new point-to-point transmission service. Entergy argues that the function performed by Weekly Operations is a transmission function.¹³

⁹ *Id.* at 5-6.

¹⁰ *Id.* at 8 (citing *So. Cal. Edison Co.*, 6 FERC ¶ 61,015, at 61,040 (1979)).

¹¹ *Id.* at 8, n.18.

¹² Entergy Answer at 4.

¹³ *Id.*

15. Entergy states that the Weekly Operations entity's role under the WPP is consistent with Standards of Conduct precisely because the process is used to grant transmission services.¹⁴ Entergy argues that it initially proposed to have the Entergy transmission function, rather than EMO, operate the WPP, including soliciting bids to serve load. Entergy states that it re-defined the responsibilities of EMO and the Entergy transmission function when it made its filing in Docket No. ER04-699-000, after the Commission expressed concern that Entergy's original proposal may be inconsistent with Order Nos. 888 and 889.¹⁵

16. Entergy argues further that it cannot be held accountable for network integration transmission service customers' lack of participation in the WPP. Entergy also rejects Joint Customers' argument that the WPP benefits the Energy Operating Companies' retail customers at the expense of wholesale transmission customers and argues that the ICT oversees the WPP to ensure that "transmission service granted through the [WPP] is done with rules that are fair to all participants."¹⁶

17. Joint Customers argue in their answer that Entergy mischaracterizes Order No. 668. Joint Customers contend that Order No. 668 did not, as Entergy claims, identify transmission accounts for recording organized market investments in computer hardware, software, and communication equipment. Rather, according to Joint Customers, Order No. 668 created a new class of accounts in which certain regional transmission and market operation asset function expenses would be recorded. Joint Customers argue that the Commission never specified in Order No. 668 or elsewhere that all plant booked in those accounts serves a transmission function. Further, Joint Customers argue that Order No. 668 did not purport to address appropriate cost recovery.¹⁷

18. Joint Customers reject Entergy's assertion that wholesale transmission customers benefit from the WPP. Joint Customers state that Entergy provides no information in its filing or in its answer identifying any concrete benefits of the WPP to Entergy's OATT customers and assert that, even if network integration transmission service customers did benefit from the WPP, the primary benefit from sales from new network resources would be production related, i.e., sales revenue for a generator and energy savings for the customers served.¹⁸ Joint Customers contend that Entergy bears the burden of proof in

¹⁴ *Id.*

¹⁵ *Id.* at 5 (citing *Entergy Servs., Inc.*, 104 FERC ¶ 61,336, at P 7 (2003)).

¹⁶ *Id.* at 6 (quoting *Entergy Servs., Inc.*, 115 FERC ¶ 61,095, at P 291 (2006)).

¹⁷ Joint Customers Answer at 4.

¹⁸ Joint Customers Answer at 5.

this proceeding to demonstrate that it is appropriate to recover WPP costs from its OATT customers, whether or not they are eligible or choose to participate in the WPP. Joint Customers hold that Entergy has not met its burden here.

19. Joint Customers maintain further that Entergy has not demonstrated that most or any of the WPP costs are transmission-related. Joint Customers argue that, even if Entergy had shown that network integration transmission service customers, as potential participants in the WPP, should bear some cost responsibility associated with the WPP, Entergy has not shown what portion of the WPP costs are transmission-related or properly assigned to network integration transmission service customers.

IV. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Entergy's and Joint Customers' answers because they have provided information that assisted us in our decision-making process.

B. Hearing and Settlement Judge Procedures

21. Entergy's revisions to its OATT raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

22. Our preliminary analysis indicates that the proposed OATT revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the proposed revisions for filing, nominally suspend them and make them effective June 1, 2012, as requested, subject to refund, and establish hearing and settlement judge procedures.

23. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁹ If the parties desire, they may,

¹⁹ 18 C.F.R. § 385.603 (2011).

by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.²⁰ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Entergy's proposed revisions are hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2012, as requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter 1), a public hearing shall be held concerning Entergy's proposed revisions. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If

²⁰ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.